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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743

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EXAMINER

CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,732

Applicant(s)

HALEY, JAMES E.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5272004</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5, 7, 8, 10-12, 14-16 and 18-21 rejected under 35 U.S.C. 102(b) as being anticipated by US 5,799,836 to Lee.

Lee shows a bottle stopper formed of a resilient material as seen in Figs. 6, having a first cylindrical section inserted in sealing engagement into a container 40 and a second cylindrical section adjacent the first cylindrical section extending above the opening of the container, an air passageway 16 disposed adjacent and extending longitudinally along the length the first cylindrical section.

#### In reference to claims 2, 3 and 8:

Lee shows a visual indicator 24, and the slope of the spout 15 provide reference for proper pouring, see column 2, lines 63-66.

#### In reference to claims 5 and 7:

Lee shows a spout 15 has a slope of about 50 degrees and a protuberance 14.

#### In reference to claims 10 and 11:

Lee shows the air passageway and the tip of the spout are spaces about 180 degrees.

#### In reference to claims 12:

Lee shows a filter 30.

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In reference to claims 14, 15 and 16:

Lee shows a cap 20 with sealing ring 21 and sealing grooves 23.

In reference to claims 18 and 19:

Lee shows a stopper and spout to be used on a container for pouring the content of the container that include the steps of visually determining the proper orientation of the spout and tilting the container in that orientation to pour.

In reference to claims 20 and 21:

Lee shows a stopper manufactured with the characteristics described above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,799,836 to Lee.

Lee shows all claimed features as discussed above except for a color marking of the cylindrical body for visual orientation. Lee shows a spout shaped in an angle and a visible vent hole to help the user determine the orientation the spout before pouring, Lee also suggests to use decorating visual effects as seen in Fig. 7. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to add color to the device of Lee since such combination represents a substitute of well-known alternative equivalent of visual effects which is well known within the level of skill in the art.

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5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,799,836 to Lee in view of US 4,078,700 to Hidding.

Lee shows all claimed features as discussed above but is silent about having an anti-drip spout. Hidding shows a spout with an anti-drip element 56 as seen in Fig. 1. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Lee to include an anti-drip spout as taught by Hidding to protect the container contents against spillage.

6. Claims 6, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,799,836 to Lee in view of US 5,228,603 to Pham et al.

Lee shows all claimed features as discussed above except for the filter material being of the same material as the spout and a flexible strand at about 120 degrees from the spout. Pham show a spout with a filter material 76 made of the same material as the spout and a flexible strand 312 at about 120 degrees from the spout 305. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Lee to include a filter made of the same material as the spout and a stand as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process and having a stand to prevent miss placing the cap.

In reference to claim 6:

The device of Pham shows the spout extending about 0.10 inches above the container.

*Conclusion*


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goceliak shows a combination pouring and strainer. Lutzker shows a pouring fitment with filter. Rettberh shows an adjustable pouring dispenser.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 9/18/05  
MAC

 9/19/05  
Frederick Nicolas  
Primary EXAMINER